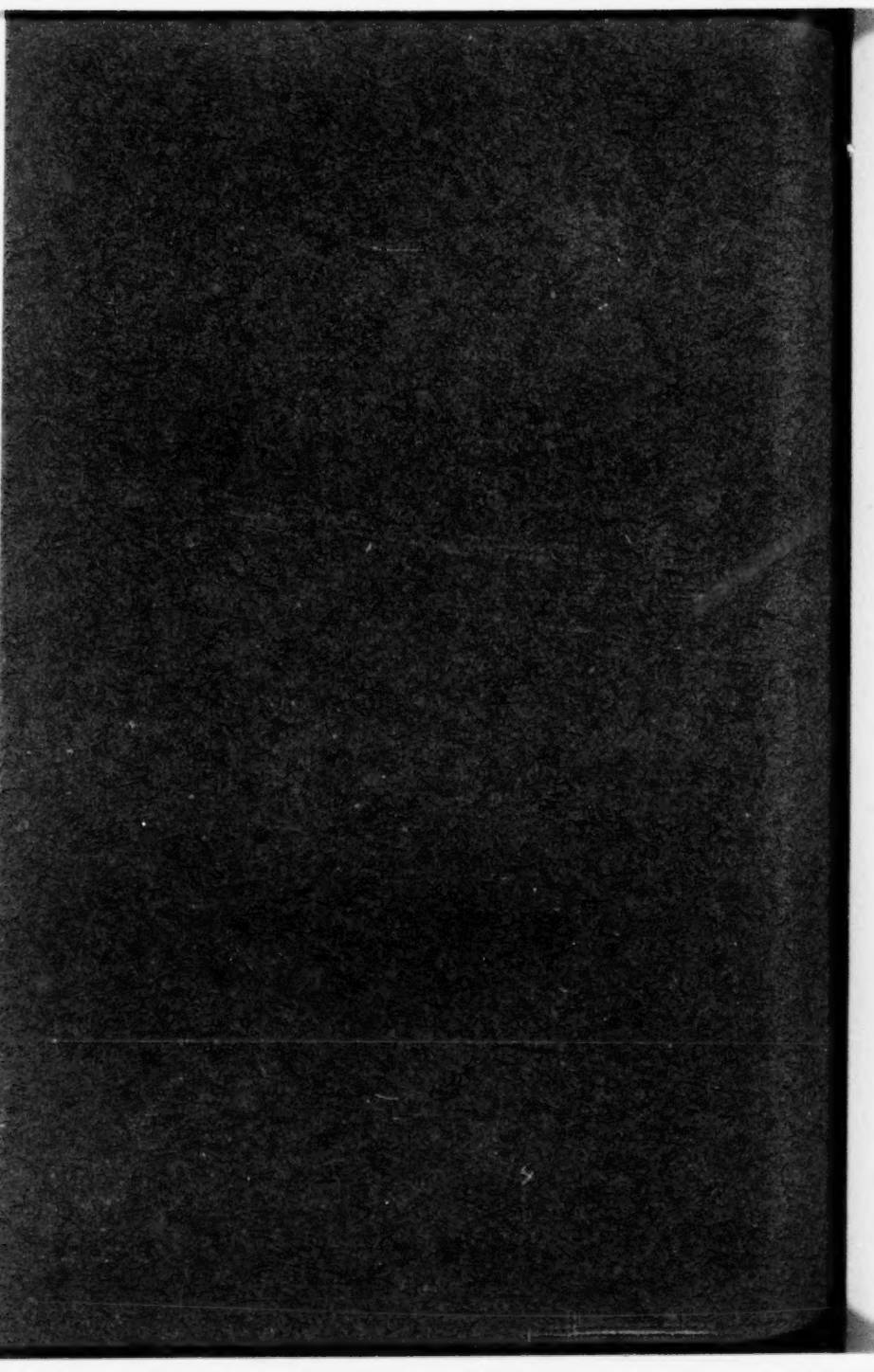




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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 209

MAGNOLIA PETROLEUM COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 32-35) is reported in 53 F. Supp. 231.

JURISDICTION

The judgment of the Court of Claims was entered January 3, 1944 (R. 35). On March 2, 1944, the petitioner filed a motion for a new trial which was overruled on April 3, 1944 (R. 36). The petition for a writ of certiorari was filed June 30, 1944. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Whether the transportation of liquid products of crude petroleum and also of the crude petroleum through petitioner's pipe lines from its storage tanks to vessels at its wharves is a taxable movement under the provisions of Section 731 of the Revenue Act of 1932.

STATUTE AND REGULATIONS INVOLVED

The pertinent statute and regulations are set forth in the Appendix, *infra*, pp. 10-13.

STATEMENT

The special findings of fact of the Court of Claims (R. 28-32) may be summarized as follows:

During the period involved in this action petitioner was a Texas corporation engaged in the business of producing, refining, and marketing petroleum and petroleum products. It had refineries at Beaumont, Corsicana, Fort Worth, and Luling, Texas. Under its charter, petitioner could operate no pipe line, and it was not a common carrier, but it wholly owned the Magnolia Pipe Line Company which was a common carrier pipe-line transportation company and which had the same officers and management as petitioner (R. 28).

The Commissioner of Internal Revenue asserted against the petitioner for the period here involved pipe-line transportation taxes in the amount of \$74,883.50 and \$10,793.10 on account of the conveyance by the petitioner of refined petroleum

products and crude oil, respectively, into vessels located at petitioner's wharf at Beaumont, Texas. The Commissioner also asserted pipe-line transportation taxes against the petitioner in the amount of \$2,030.63 by reason of the conveyance by petitioner of crude oil into barges at its Cameron Meadows lease (R. 28-29).

The above-mentioned taxes were duly assessed and paid¹ and a timely claim for refund filed. This claim for refund was rejected on March 20, 1941, and this suit was begun in the court below on May 5, 1942 (R. 1, 29).

Petitioner had a refinery and storage sites at Beaumont occupying approximately 750 acres abutting the Neches River, a navigable stream flowing into the Gulf of Mexico. This was a complete refinery at which all the principal petroleum products were manufactured. The Neches River is on the north boundary of the plant and there was a wharf there about 1,500 feet long with berth space for three vessels. The tanks from which the crude petroleum and refined products were loaded into vessels at the wharf at Beaumont were about 50 in number. They were arranged in rows from 400 to 2,400

¹ The petitioner also paid pipe-line transportation taxes on the conveyance of refined products from the Beaumont refinery to vessels located at petitioner's Magpetco terminal, nine miles from Beaumont, and also on the conveyance of crude oil into vessels at the Magpetco terminal (R. 28-29). Petitioner is raising no point here as to the taxes on these operations.

feet from the wharf. After the various steps in the production of the oil and its refining, the finished product was delivered to this group of tanks.

The tanks were connected with lines of pipes to a pump house. From the pump house to the wharf there were about a dozen discharge lines, a line for each type of product handled. Each discharge line was connected to a loading rack located on the wharf. From each loading rack there was a rubber hose from 38 to 40 feet long to carry the oil from the rack into the vessel (R. 30, 31).

The Cameron Meadows lease was located in southern Louisiana in swampy country and was reached by means of canals. The canals were used for the movement by barge of oil produced from the wells. The oil as it came from the wells was placed into settling tanks where it was treated. From the settling tanks the oil was moved by a line of pipes to stock tanks and from the stock tanks it was transferred to barges through pipes and rubber hose (R. 31).

The court below held that the petitioner was subject to the tax on the transportation of oil as asserted by the Commissioner and rendered judgment in favor of the United States.

ARGUMENT

1. The primary question in this case is whether the movement of oil from storage tanks through

pipe-lines into vessels on waters adjoining the premises on which the tanks are located is a "transportation * * * by pipe-line" within the meaning of Section 731 of the Revenue Act of 1932. Inasmuch as petitioner is no longer raising any question as to the taxability of the movement of crude oil into vessels at Beaumont, the issue is limited to the taxability of the movement of the refined products at the Beaumont refinery and the crude oil at Cameron Meadows.

In *McKeever v. Fontenot*, 104 F. (2d) 326, which also involved the movement of oil from storage tanks to wharves or vessels, the Circuit Court of Appeals for the Fifth Circuit held such a movement taxable, and this Court denied certiorari (308 U. S. 588). Each of the contentions urged by petitioner here was made in the petition for certiorari in that case (pp. 15-19). If the point was not worthy of review then, it is less so now when an additional lower court has come to the same conclusion.

The movement of oil from the tanks to the wharves or vessels is clearly "transportation" in a literal sense, so that there is no difficulty in bringing the movement in question here within the language of the statute. Petitioner's reliance is upon the Treasury Regulation (Reg. 42, Art, 26) which holds transportation by a private owner taxable under the Act (1) when "the movement is substantially similar to movements which pipe-

line carriers usually undertake and perform", (2) when "the movement is not merely local or incidental to another business or a related business engaged in by the person so transporting, such as the producing or refining of oil", and (3) when "delivery service such as loading into tank cars or tank vessels by means of loading racks is * * * rendered as a continuation or part of a prior taxable service."

The Court of Claims found that pipe-line companies consistently charged fees for moving oil from tanks to vessels, and that accordingly petitioner's service was similar to that usually undertaken by pipe-line companies. The same conclusion of fact had been reached in the *McKeever* case. The fact that the pipe-line companies may render such services at the end of a through movement, and not merely within the confines of a single refinery, does not make the service from tank to vessel dissimilar. In addition, the transportation from tank to vessel was not incidental to the refining or production of oil. At Beaumont "the movements taxed were not incidental to the refining of oil but were movements which took place after all refining processes had been completed and were movements towards market."² At Cameron Meadows the movement was not incidental to the production of the

² The quotation is from the findings of the district court in the *McKeever* case, set forth at page 127 of the transcript of record in this Court, October Term 1939, No. 304.

crude oil, but occurred after the oil had been drilled and stored, and was ready to be marketed as crude. Nor is petitioner exempt from tax on the ground that "delivery service such as loading * * * by means of loading racks" is not taxable unless "rendered as a continuation or part of a prior taxable service." For here the movement from the tanks to the racks constituted a prior taxable transportation.

The decision of the court below is not, as petitioner alleges, in conflict with the recent decision of the Circuit Court of Appeals for the Tenth Circuit in *Jones v. Continental Oil Co.*, 141 F. 2d 923. In that case the movement of oil was from the well mouth through the treating and stabilization equipment into storage tanks where it was measured for royalty purposes and delivered to the pipe-line department. The District Court found as a fact that such movement was not similar to that which a pipe-line carrier would ordinarily or usually undertake and perform, and that such movement was part of the production process. The Circuit Court of Appeals in affirming this decision approved the test set forth in the Commissioner's Regulations (Regulations 42, Appendix, *infra*) that transportation within the meaning of the Act includes transportation by a private owner whenever the movement is substantially similar to movements which pipe-line carriers usually undertake and perform. That court further recognized (p. 926) that the "question when production ceases and transportation

commences is one which necessarily lies within the peculiar province of the trier of the facts, having regard for the practicalities of the problems involved."

2. The alternative question raised by petitioner (Pet. 6)—whether the Commissioner fixed reasonable rates as the basis for computing the tax—is in fact not an issue in this case. Section 731 of the Revenue Act of 1932 provides that the determination of a "fair charge" for pipe-line transportation of liquid petroleum products shall be made first, from *bona fide* rates or tariffs of the transporter, or if no such rates or tariffs exist, then on the basis of *bona fide* rates or tariffs of other pipe-line companies for "like" services. It is only in cases where no such rates or tariffs exist that Section 731 (b) (3) provides for a determination of a "reasonable charge" for the transportation by the Commissioner. The court below found as a fact on substantial evidence that common carrier pipe-line companies operating in the immediate vicinity of petitioner's lines published *bona fide* rates or tariffs for services equivalent to those rendered by petitioner for itself. It therefore properly held that the Commissioner was not authorized to determine what would be a "reasonable charge" (R. 35). Cf. also *National Pipe Line Co. v. United States*, 48 F. Supp. 655, 659, *et seq.* (C. Cls.).

3. This case involves taxes for the years 1933 through 1936 and for a portion of the year 1937. Section 616 of the Revenue Act of 1942 (56 Stat. 798) effective November 1, 1942, amends Section 3460 of the Internal Revenue Code (26 U. S. C. 1940 ed., Supp. III, Sec. 3460) (that section being the successor to Section 731 of the 1932 Act) to exempt from the tax "any movement through lines of pipe within the premises of a refinery * * * if such movement is not a continuation of a taxable transportation."

CONCLUSION

The decision below is correct. There is no conflict of authority. The petition should be denied. Respectfully submitted.

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AUGUST 1944.